
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

SCOTT LYNN BALLERING,

Plaintiff,

v.

STATE OF UTAH, WASHINGTON
COUNTY, CITY OF HURRICANE UTAH,
and MICHAEL JOHNSTON,

Defendants.

**MEMORANDUM DECISION AND
ORDER TO:
(1) PAY FILING FEE OR FILE MOTION
TO PROCEED *IN FORMA PAUPERIS*
AND
(2) AMEND DEFICIENT COMPLAINT**

Case No. 4:21-cv-00004-DN

District Judge David Nuffer

Plaintiff filed this case¹ in the U.S. District Court of Pennsylvania Eastern on December 17, 2020 without either paying the fees to commence a civil action or filing a motion to proceed *in forma pauperis*.² The case was transferred to this Court on January 13, 2021.³ By no later than March 5, 2021, Plaintiff must either pay the filing fee or file a motion to proceed *in forma pauperis*, or Plaintiff's complaint will be dismissed without prejudice.

Additionally, Plaintiff's complaint is deficient and fails to state a claim against the named defendants on which relief may be granted. By no later than March 5, 2021, Plaintiff must file an amended complaint which corrects the deficiencies of the original complaint, or this action will be dismissed without prejudice.

¹ Complaint, [docket no. 1](#), filed Dec. 17, 2020.

² 28 U.S.C. § 1915.

³ [Docket no. 4](#), entered Jan. 13, 2021.

INSTRUCTIONS TO PLAINTIFF TO FILE AN *IN FORMA PAUPERIS* MOTION

Plaintiff must, within thirty (30) days of the date of this Order, either (1) pay \$402 (the \$350 filing fee and \$52 administrative fee) to the Clerk of the Court, or (2) file a motion to proceed *in forma pauperis*. The Full Pro Se Litigant Guide may be found on the Court's website here: https://www.utd.uscourts.gov/sites/utd/files/prose_guide.pdf. A form Motion to Proceed *In Forma Pauperis* may be found on the Court's website here: <https://www.utd.uscourts.gov/sites/utd/files/Motion%20to%20Proceed%20IFP%20Nonincarcerated%20FINAL%20201210.pdf>.

INSTRUCTIONS TO PLAINTIFF TO CURE DEFICIENT COMPLAINT

Under Rule 8 of the Federal Rules of Civil Procedure a complaint is required to contain “(1) a short and plain statement of the grounds upon which the court’s jurisdiction depends, . . . (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks.”⁴ The requirements of Rule 8(a) are intended to guarantee “that defendants enjoy fair notice of what the claims against them are and the grounds upon which they rest.”⁵

Pro se litigants are not excused from compliance with the minimal pleading requirements of Rule 8. “This is so because a pro se plaintiff requires no special legal training to recount the facts surrounding his alleged injury, and he must provide such facts if the court is to determine whether he makes out a claim on which relief can be granted.”⁶ Moreover, “it is not the proper function of the Court to assume the role of advocate for a pro se litigant.”⁷ Thus, the Court

⁴ Fed. R. Civ. P. 8(a).

⁵ *TV Commc’ns Network, Inc. v. ESPN, Inc.*, 767 F. Supp. 1062, 1069 (D. Colo. 1991), *aff’d*, 964 F.2d 1022 (10th Cir. 1992).

⁶ *Hall v. Bellmon*, 935 F.2d 1106, 1009 (10th Cir. 1991).

⁷ *Id.* at 1110.

cannot “supply additional facts, [or] construct a legal theory for plaintiff that assumes facts that have not been pleaded.”⁸

Plaintiff should consider the following points before refiling his complaint: (1) the amended complaint must stand entirely on its own and shall not refer to, or incorporate by reference, any portion of the original complaint;⁹ (2) the amended complaint must clearly state what each named defendant did to violate Plaintiff’s rights; and (3) Plaintiff is warned that litigants who have had three *in forma pauperis* cases dismissed as frivolous or meritless will be restricted from filing future lawsuits without prepaying fees.

ORDER

THEREFORE, IT IS HEREBY ORDERED THAT:

(1) By no later than March 5, 2021, Plaintiff must:

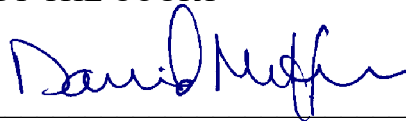
- (a) Pay the \$402 filing fee or file a motion to proceed *in form pauperis*; and
- (b) File an amended complaint which corrects the deficiencies of Plaintiff’s original complaint.

(2) The Clerk’s Office is directed to mail Plaintiff a copy of the Pro Se Litigant Guide with this Order; and

(3) If Plaintiff fails to comply with this Order according to these instructions, this action will be dismissed without prejudice, without further notice.

Signed February 3, 2021.

BY THE COURT



David Nuffer
United States District Judge

⁸ *Dunn v. White*, 880 F.2d 1188, 1197 (10th Cir. 1989).

⁹ *Murray v. Archambo*, 132 F.3d 609, 612 (10th Cir. 1998) (amended complaint supersedes original).